IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 10708 of 2007(Y)

PETITIONERS:

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1. P.K.ABDURAHIMAN, HSA (ARABIC),
   PMSA PT HSS, KAKKOVE, P.O.VAZHEYOOR,
   (VIA) RAMANETHUKARA, MALAPPURAM DT.

2. V.BALAN, SANSKRIT TEACHER,
   MOKERI EAST U.P.SCHOOL,
   P.O.MOKERI, PANOOR (AFO)

BY ADV. SRI.P.NARAYANAN

RESPONDENTS:

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1. THE DISTRICT EDUCATION OFFICER,
   MALAPPURAM.

2. DEPUTY DIRECTOR OF EDUCATION,
   MALAPPURAM.

3. ASSISTANT EDUCATION OFFICER,
   PANOOR, KANNUR DISTRICT.

4. THE DEPUTY DIRECTOR OF EDUCATION,
   KANNUR.

BY GOVERNMENT PLEADER SRI.A.J.VARGHESE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K.BASHEER, J.

W.P.(C)No.10708 OF 2007

Dated this the 6th day of June, 2007

JUDGMENT

Petitioner no.1 is working as High School Assistant (Arabic) in an aided school whereas petitioner no.2 is a Sanskrit teacher in an Upper Primary school. Their common grievance is that they have been asked to repay the so called excess salary and allowances drawn by them pursuant to pay fixation orders in terms of Exts.P1 and P2. It is not in dispute that pay of the petitioners was revised and re-fixed when anomaly was noticed that their juniors were placed on a higher scale.

2. I do not propose to deal with the issue at length in view of the fact that circular bearing No.59151/J2/2000/ Gen.Edn., has been quashed by this court in Ext.P5 judgment. In Ext.P6 judgment, a learned Single Judge of this court had held that the said circular could not have the effect of amending the notification issued by the Government and that too with retrospective effect. It was further held that the

restrictive clause in the said circular contrary to Rule 37 of Chapter XIV A KER cannot have any legal force.

3. In the statement filed by respondent no.2, it is admitted that Exts.P3 and P4 had been issued on the basis of the circular referred to above. It is seen admitted by respondent no.2 that petitioner no.1 was senior to Sri.P.Krishnakumar. It is further conceded that the benefit of pay revision was granted to petitioner no.1 with effect from January 1, 1998 while Sri.Krishnakumar got the said benefit with effect from July 1, 1997. The respondent tries to justify this apparent anomaly by contending that petitioner no.1 and Sri.Krishnakumar belong to two categories. Curiously, both are teaching languages. There could not have such a hostile classification or discrimination. This was exactly what the learned Judge found in Ext.P6 judgment.

4. In any view of the matter, I have no hesitation to hold that Exts.P3 and P4 are bad in the eye of law. Apparently the officers who passed Exts.P3 and P4 had not taken note of Exts.P5 and P6 judgments of this court. Necessarily therefore

fresh orders have to be passed in the matter, keeping in view the dictum laid down by this court in the judgments referred to above. Therefore, Exts.P3 and P4 are quashed. The officer concerned shall pass appropriate consequential orders in terms of the observations made above.

Writ petition is allowed.

A.K.BASHEER, JUDGE

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